

Chapter IV

Alternative Guidelines Models

Most recently, two alternative guidelines models have been introduced to state child support guidelines review committees. They are:

- ✓ “Cost Shares Model”³⁰, and
- ✓ the model developed by the American Law Institute (ALI).³¹

At this time, no state has adopted either of these models, although Massachusetts and the District of Columbia’s hybrid between the Income Shares and the percentage-of-obligor income model has been considered as a prototype for the American Law Institute model. Last year, the Georgia Child Support Guidelines Review Committee heard presentations on both the Cost Shares and ALI Models. The Cost Shares Model has been introduced as legislative bills in two states during this legislative session.³² In all, the Cost Shares Model has received more attention, hence is the focus of this chapter.

COST SHARES MODEL

History

The Cost Shares model originates from a model developed by the Children’s Rights Council (CRC) that has been refined by Mark Rogers, an economic consultant based in Georgia. The CRC model was first published in a Federal Office of Child Support Enforcement (OCSE) report entitled, *Child Support Guidelines: The Next Generation*.³³ Each chapter of the OCSE report addresses a specific guidelines issue (e.g., income determination under guidelines and use of economic estimates of child-rearing costs in guidelines). The final two chapters of the report provide the views of custodial and noncustodial parents advocacy groups. One of those chapters introduces the CRC model.

³⁰ R. Mark Rogers and Donald J. Bieniewicz, "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," Paper presented to National Association of Forensic Economics, Southern Economic Association Annual Meeting, , Alexandria, Virginia, November 12, 2000. Rogers and Bieniewicz’s Cost Shares model is based on the Children’s Rights Council model published by Donald J. Bieniewicz *in* *Child Support Guidelines: The Next Generation*, Margaret Campbell Haynes, ed., Report to the Federal Office of Child Support Enforcement, Center on Children and the Law, American Bar Association (April 1994).

³¹ Grace Ganz Blumberg, “The American Law Institute’s Treatment of Child Support,” *Family Law Quarterly*, vol. 33, no 1. (Spring 1999).

³² Those states are Georgia (House Bill 672) and Minnesota (House Bill 3582). The statuses on these bills are the same. They have been referred to the House Judiciary Committee, but have not yet been heard.

³³ Margaret Campbell Haynes, ed., *Child Support Guidelines: The Next Generation*, Report to the U.S. Department of Health and Human Office of Child Support Enforcement, Prepared by the Center on Children and the Law, American Bar Association. (April 1994).

State child support guidelines review committees frequently read the OCSE report immediately following its 1994-publication date, hence some states became interested in the CRC model. New Jersey reviewed the CRC model extensively but identified several mathematical concerns about it.³⁴ For example, application of the CRC model frequently resulted in \$0 order amounts and the order amount would plateau once the noncustodial parent's gross income reached \$1,350 per week; that is, the order amount remained unchanged when the noncustodial parent's income increased above \$1,350 per week.³⁵

Rogers, a member of the 1998 Georgia Child Support Guidelines review committee, revamped and reshaped the CRC model into the "Cost Shares Model." Subsequently, the Georgia child support guidelines committee and the Kentucky Cabinet for Human Resources have reviewed it.³⁶ Rogers clarifies that although the name, "Cost Shares model" sounds similar to the Income Shares model, they are very different. Rogers also emphasizes that the Cost Shares model differs from the percentage-of-obligor income model.

Theoretical Differences between the Cost Shares and Income Shares

The Cost Shares and the Income Shares Model differ remarkably in their premises. The Income Shares model assumes:

That the child should be entitled to the same amount of expenditures that would have been made on the child if the parents lived together.

In contrast, the Cost Shares model recognizes that:

- ✓ it costs more to maintain two households than one household when parents do not live together;
- ✓ the standard of living realized when the family was intact cannot be achieved by both households because of the increased costs of maintaining two households; and,
- ✓ the custodial parent's tax liability is reduced by claiming the children as dependents, but the noncustodial parent receives no tax benefit for payment of child support.

³⁴ Daniel Phillips, *Analysis of Child Support Guidelines Issues*. Report to the Family Division Practice Committee, Subcommittee on Child Support, Stephen J. Schaeffer, P.J.F.D., Chair. Prepared by the New Jersey Administrative Office of the Courts, Probation Child Support Enforcement Services, Trenton, New Jersey (January 1995).

³⁵ Phillips (1995), pages 5-6.

³⁶ The Georgia Commission on Child Support reviewed the Cost Shares, Income Shares, America Law Institute and percentage-of-obligor net income guidelines models. The Commission concluded that the Georgia guidelines, which are based on a percentage-of-obligor gross income, generally result in appropriate and adequate child support awards and a change in guidelines models was not warranted. [Georgia Commission on Child Support, *Report to the Governor*, (July 2001)]. Louise Graham, Wendall Professor of Law, University of Kentucky College of Law was contracted by the Kentucky Cabinet for Human Resources to respond to Mark Rogers' criticisms of the Income Shares model and suggestion that the Cost Shares model was a more reasonable approach for Kentucky to pursue. Her report is still in draft form.

Overview of the Models

Exhibits IV-1 and IV-2 provide simplified worksheets illustrating how the premises of the Income Shares and Cost Shares models are translated into child support order calculations.³⁷ These worksheets assume there are no adjustments for shared-parenting time, child care costs and the noncustodial parent is not eligible for a low-income adjustment. Both guidelines models would consider these other special factors if they were present. The calculations are based on a custodial parent whose income is equivalent to median female earnings; a noncustodial parent whose income is equivalent to median male earnings; and, Michigan and Federal income tax rates and FICA.³⁸

Exhibit IV-1 Example of Income Shares Calculation			
Assumptions:			
a. Number of Children = 1, No shared-parenting time, no child care costs & no adjustments to income			
a. Noncustodial parent's gross income = \$642/week (median male earnings)			
a. Custodial parent's gross income = \$371/week (median female earnings)			
a. Michigan and Federal income tax rates and FICA			
Income Shares Calculation			
	Noncustodial Parent	Custodial Parent	Combined
1. Gross Income	\$ 642	\$ 371	
2. After-Tax Income (based on actual year-end tax filings)	\$494	\$352	\$
3. Each Parent's Share of Combined After-tax Income (Line 2 for each parent / Line 2 Combined)	58%	42%	100%
4. Basic Child Support Obligation (Based on child-rearing expenditures in intact family, e.g., Michigan Formula Appendix C)			\$184
5. Each Parent's Share of the Basic Obligation (each parent's Line 3 X Line 4)	\$107	\$77	
6. Noncustodial Parent's Child Support Obligation (Line 5 for the noncustodial parent, the custodial parent spends his/her share directly on the children)	\$107		

Income Shares Steps

In the simplified worksheet displayed in Exhibit IV-1, the following steps would be taken to arrive at the noncustodial parent's child support obligation using the Income Shares Model.

Line 1: The calculation starts with each parent's gross income.

³⁷ Cost Shares schedule and worksheet are based on the schedule in Georgia HB672 sponsored by Representative Earl Erhard, 36th District (2001).

³⁸ Median earnings are from the U.S. Census Bureau, Supplemental Survey 2000. They are \$642 per week for males and \$371 per week for females. Taxes are based on end-of-year 2001 filings.



Line 2: In Michigan, the child support calculation would be based on actual tax returns when available rather than gross income.³⁹ (This step would not occur in all Income Shares states, over two-thirds of the Income Shares states base the calculation on gross income.)

Line 3: Each parent's share of combined after-tax income is calculated.

Line 4: Child support obligation is determined from the tables indicating child-rearing expenditures in intact families with the same amount of combined after-tax income and number of children.

Line 5: Each parent's share of the child support obligation (Line 4) is apportioned according to his or her after-tax income.

Line 6: The child support order amount would be set at the amount shown for the noncustodial parent on Line 5.

Cost Shares Steps

Exhibit IV-2 displays the steps taken to arrive at the noncustodial parent's child support obligation using the Costs Shares Model. More steps are necessary than what is needed in the Income Shares model to address the tax differences resulting from the custodial parent claiming the children that the Cost Shares intends to neutralize.

Line 1: The calculation starts with each parent's gross income.

Line 2: Average gross income is calculated since it is the base of the guidelines schedule calculation. Average income is used rather than combined income(which is the income base of the Income Shares Model) because it is more consistent with there being two households.

Line 3: The custodial parent's after-tax income if children are claimed as dependents is calculated. This will be used later to determine the amount of the tax benefit due to the children.

Line 4: The after-tax income of each parent is calculated assuming each parent files as a single taxpayer. This essentially places the parents on equal ground with respect to their tax liabilities.

Line 5: The self support reserve assures that the parent has a certain amount of income to live. The vast majority of state guidelines including Michigan have a self support reserve, however, most states do not consider it when determining each parent's share of total income. The Cost Shares, however, does consider it in the income apportionment.

Line 6: This is each parent's income available for support. It is based on each parent's after-tax income assuming each parent files as a single taxpayer less the self support reserve.

Line 7: The parent's adjusted, simulated after-tax income is apportioned. This represents each parent's share of basic child support obligation.

³⁹ See *Michigan Child Support Formula Manual 2001*, [H.1]. The Michigan Guidelines further state in the absence of tax returns that employer tax guides can be used. It should be noted, however, that when the withholding amounts in the employer tax guides are annualized they do not add up to the amounts for the end-of-year tax filing returns (IRS 1040). The major difference is the employer tax guides only allow a partial advance of the Earned Income Tax Credit and do not consider the child tax credit.

Line 8: Basic child support obligation is calculated using the parent's average gross income applied to a schedule depicting child-rearing expenditures in single-parent families.

Line 9: The tax benefits from the children are calculated.

Line 10: The amount of the tax benefits from the children is subtracted from the basic child support obligation. This is the amount of child-rearing costs to be shared by the parents.

Line 11: Each parent's share of the tax-adjusted, basic child support obligation is calculated based on his or her share of combined adjusted, simulated after-tax income.

Line 12: The child support order is set at the amount shown for the noncustodial parent in Line 11.

Exhibit IV-2 Example of Cost Shares Calculation			
Assumptions:			
a. Number of Children = 1, No shared-parenting time, no child care costs & no adjustments to income			
b. Noncustodial parent's gross income = \$642/week (median male earnings)			
c. Custodial parent's gross income = \$371/week (median female earnings)			
d. Michigan and Federal income tax rates and FICA			
Cost Shares Calculation			
	Noncustodial Parent	Custodial Parent	Combined
1. Gross Income	\$ 642	\$ 371	
2. Average Gross Income (Line 1 Combined divided by 2)			\$506.50
3. After-Tax Income if Children Are Claimed as Dependents (complete for custodial parent only)		\$352	
4. After-Tax Income if Parent Files as a Single Taxpayer with No Dependents	\$494	\$295	
5. Each Parent's Self Support Reserve (1.33 X Federal poverty level for one person)	\$227	\$227	
6. Each Parent's Income Available for Support if Parent Files as a Single Taxpayer with No Dependents (Each parent's Line 4 – parent's Line 5)	\$267	\$68	\$335
7. Each Parent's Share of Combined Income Available for Support (Line 6 for each parent / Line 6 combined)	80%	20%	100%
8. Basic Child Support Obligation (Use income from Line 2 on Cost Shares Table, which is based on child-rearing expenditures in single-parent families)			\$123
9. Tax Benefit from the Children (Custodial parent's Line 3 minus custodial parent's Line 4)		\$57	
10. After-tax Basic Child Support Obligation (Combined Line 8 minus custodial parent's Line 9)			\$66
11. Each Parent's Share of the After-tax Basic Obligation (each parent's Line 7 X Line 10)	\$53	\$13	
12. Noncustodial Parent's Child Support Obligation (Line 11 for the noncustodial parent, the custodial parent spends his/her share directly on the children)	\$53		



Differences in the Economic Underpinnings

The underlying premises of the Cost Shares and Income Shares model drive their differences. The Income Shares model assumes the child should not be penalized because the parents do not live together; that is, child-rearing expenditures should not be compromised just because the parents change their relationship. In recognition that it costs more to maintain two households than one household, however, the Cost Shares implicitly places some of that economic burden of financing two households on the child. It also uses tax benefits due to the children—including those designed to encourage work among single-parent families (i.e., the Earned Income Tax Credit)—to offset child-rearing costs. Another key difference is the adjustment for low-income, noncustodial parents. These differences are discussed in greater detail below.

Differences in Basic Child Support Obligations

There are four factors that contribute to the basic child support obligation being lower in the Cost Shares model than the Income Shares model.

1. Income Shares model uses estimates of child-rearing expenditures in intact families, whereas the Cost Shares model uses estimates of child-rearing expenditures in single-parent families.
2. The income available to support the children in the Income Shares model is the combined income of the parents, whereas in the Cost Shares model, it is the average income of the parents. Most economic estimates of child-rearing costs find that families spend fewer dollars on their children when they have less income and more dollars on their children when they have more income. This is true of both intact and single-parent families. As a consequence, use of average income will result in a lower level of basic support than the use of combined income will. This effectively lowers the basic support order in the Cost Shares Model from the amount in the Income Shares Model.
3. Rogers downward adjusts the estimates of child-rearing costs in single-parent families to account for over-inflated housing costs. This adjustment is made in the Cost Shares Schedule. The Cost Shares Schedule is based on estimates of child-rearing costs developed by the United States Department of Agriculture (USDA), which uses a per capita approach to measure the child's share of housing costs. Rogers believes that this overstates housing costs. "Per capita estimation is known to yield much higher estimates of child costs than marginal cost estimation and should be viewed as an 'upper limit' for child costs for these categories."⁴⁰ Rogers does not specify the amount of the downward adjustment for over-inflated housing costs but his methodology sounds similar to the one used in the Children's Rights Council's earlier guidelines model. That adjustment

⁴⁰ Rogers and Bieniewicz (2001), page 14.

considered the ratio of the USDA estimated housing costs to the marginal difference in rent between a one-bedroom and two-bedroom apartment.⁴¹

4. Tax benefits due to the children are used to offset the basic child support obligation in the Cost Shares Model. They are not used as an offset in the Income Shares model.

Exhibit IV-3 illustrates the impact of these factors. The first column shows the dollar amount spent on one child in an intact family based on the parents combined income using the 1999 USDA estimates (\$220 per week).⁴² [1999 USDA estimates are considered because they are consistent with the Cost Shares schedule in the Georgia guidelines, the basis of the comparison. The Georgia schedule is based on 1999 USDA estimates for single-parent families.] This amount would be the basic child support obligation in the Income Shares model.

The second column in Exhibit IV-3 shows how much would be spent in a single-parent family on one child (\$179 per week) using the average income of the parents.⁴³ This is \$41 per week less than what would be spent in the comparable intact family. The third column displays the amount spent on one child (\$123 per week) once inflated housing costs are adjusted.⁴⁴ In effect, this reduces the basic child support obligation by another \$56 per week. The final column shows the Cost Shares basic child support obligation net the tax benefits due to the child.⁴⁵ This is the amount (\$66 per week) that would be apportioned to the parents for the final calculation of the child support order in the Cost Shares model. It is almost one-third the amount that would be apportioned in the Income Shares calculation.

⁴¹ Bieniewicz (1994), page 108.

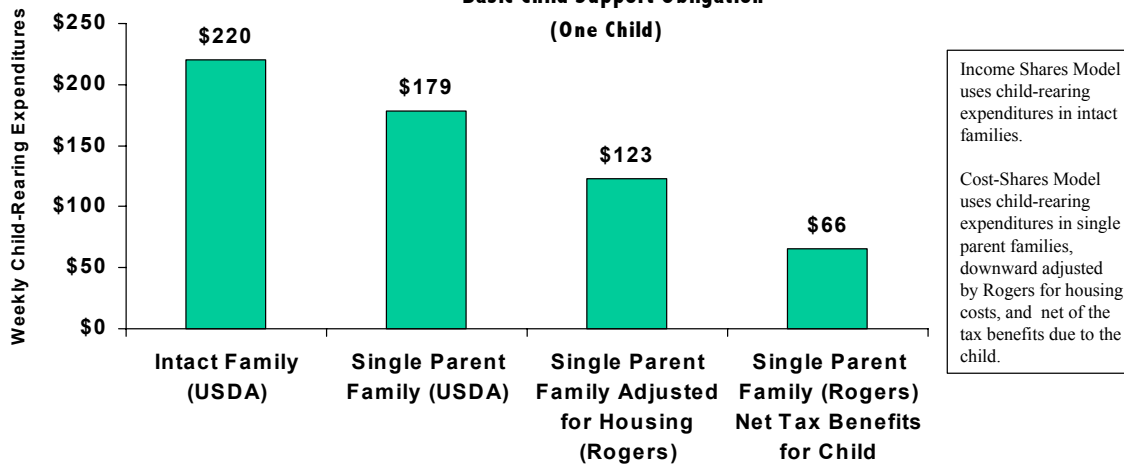
⁴² Mark Lino, *Expenditures on Children by Families: 1999 Annual Report*. U.S. Department of Agriculture, Center for Nutrition Policy and Promotion. Miscellaneous Publication No. 1528-2000. The amounts are interpolated from Table 1 using the midpoints of the mid and high income ranges. The mother's income is based on median female earnings (\$371 per week) and the father's income is based on median male earnings (\$642 per week). The combined income is \$1,031 per week.

⁴³ Based on Lino, Table 7, page 24. Amount is interpolated between the midpoints between the average incomes of the two income ranges. Average income of the parents is \$506.50 per week.

⁴⁴ Rogers has used different methods to adjust for housing costs in the various Cost Shares schedules he has developed. We use the Cost Shares schedule introduced to the Georgia General Assembly (HB672-02-06) last year. It is not clear how housing costs were adjusted in this particular schedule.

⁴⁵ The tax benefits associated with the child include the Federal child tax credit (about \$11.50 per week) although the custodial parent may not get it until the end-of-year tax filing because it is not factored into the employer's income withholding formula. The Federal Earned Income Tax Credit would average about \$28 per week, but the custodial parent would not receive all of that until the end-of-year tax filing because the employer's income withholding formula only allows part of the Earned Income Tax Credit to be advanced. Finally, Michigan allows gross income to be adjusted by \$2,900 per year for federal exemptions and an additional \$600 per child under 18 years old.

Exhibit IV-3
Comparison of Income Shares and Cost Shares Models:
Basic Child Support Obligation
(One Child)



Based on a case scenario where the noncustodial parent's weekly income is \$643 (male median earnings) and the custodial parent's weekly income is \$371 (median female earnings).

Technicality with the Basic Support Obligation in the Cost Shares Model. The USDA estimate of child-rearing expenditures in single-parent families includes child support payments as income to the single-parent family.⁴⁶ The Cost Shares Schedule is based on average gross income of the parents before child support payments. In other words, the accounting balance sheets of the USDA estimates and the Cost Shares Schedule are not comparable. To be comparable, the child support order would have to be added to the average gross income of the parents. This would result in a higher basic child support obligation.

This causes another mathematical flaw because a higher basic child support obligation would increase the noncustodial parent's child support order; and in turn, would have to be added to the parent's gross income again and again. In summary, one reason that using child-rearing costs in single-parent families is mathematically flawed is that the amount of child support received partially explains how much is spent on the children in single-parent families.⁴⁷

Another mathematical concern is that since so many single-families have incomes below poverty, there is not a lot of information about single-parent families with incomes above poverty. Information about child-rearing expenditures in single-parent families is needed to extend the child support schedule to high incomes. The USDA had to combine single-parent families with incomes in the mid and high ranges because only 17 percent of the

⁴⁶ Lino, page 9.

⁴⁷ This has been reconfirmed in the academic literature. For example, see Daniela Del Boca and Christopher J. Flinn, "Expenditures Decisions of Divorced Mothers and Income Composition," *Journal of Human Resources* vol. 29, no 3 (Summer 1994). The Del Boca and Flinn study also found that the custodial parent will increase his/her expenditures on the child even more when the income is from child support than another source.

single-parent families in the sample had incomes over \$31,000 per year. The average income of the highest income range among single-parent families considered by the USDA is \$57,800 per year (\$1,111 per week). As a result, some method of extrapolation is necessary to develop a Cost Shares Schedule for incomes above that level.

Treatment of Tax Benefits for the Children

The Cost Shares model brings up an interesting policy issue. How should tax benefits due to the children be considered in the child support calculation? The issue becomes more complex in consideration that there are many different types of tax benefits due to children (e.g., those affecting the amount of income exempted from taxes, the child tax credit, and the Earned Income Tax Credit). These issues are discussed in greater detail below.

How should tax benefits due to the children be considered in the child support calculation?

Treatment of Tax Benefits in Michigan. In Michigan's application of the Income Shares model, the tax benefits for the children affect the custodial parent's share of the basic child support obligation since each parent's share is apportioned based on after-tax income. The tax benefits for the children increase the custodial parent's after-tax income, hence the custodial parent is responsible for a larger share of the basic child support obligation than if the custodial parent receives no tax benefit from the children. This effectively reduces the noncustodial parent's share of the combined income, hence the noncustodial parent's share of the child support obligation in the Michigan application of the Income Shares model.

Treatment of Tax Benefits in Cost Shares Model. The Cost Shares model uses the tax benefits for the children to offset the basic child support obligation dollar for dollar. Since the tax benefit for the children goes to the custodial parent, this effectively reduces the amount the noncustodial parent would pay as child support.

Comparison of the Approaches. Although both approaches reduce the noncustodial parent's child support order, the Cost Shares approach results in a much larger reduction.

Types of Tax Benefits Due to Children. How to treat the tax benefits due to the children becomes more complex when the nature of the tax benefit is considered. On the one hand, the Federal Earned Income Tax Credit (EITC) was designed to encourage single parents to work and help working single parents out of poverty. On the other hand, other tax benefits were designed to offset child-rearing costs (e.g., claiming the child as an exemption). The latter objective is more consistent with why the Cost Shares model subtracts taxes than the first objective.

The EITC. Numerous studies indicate that the EITC has been immensely successful at both encouraging work and reducing poverty among single-parent families. For example, the expansion of the EITC from 1994 to 1996 is credited for half of the increase in working

single mothers over this time period.⁴⁸ The EITC is also credited with lifting 4.8 million people out of poverty, including 2.6 million children.⁴⁹ In general, the EITC is usually preferred over anti-poverty programs if the objective is to encourage work among the poor.⁵⁰

Extent of the EITC. The amount of the EITC can be considerable. The case scenario examined in Exhibits IV-4 and IV-5 consider a custodial parent with gross income equivalent to median female earnings, \$371 per week (\$19,292 per year). The EITC for that income averages about \$28 per week for one child. That is about half of the amount of the tax benefit for the child at that income level. For two or more children, it would average about \$52 per week. (The amount of the EITC is the same for two or more children.) In 2001, the maximum EITC averaged about \$77 per week (about \$4,008 per year). In 2001, the EITC phased out when the single parent earned \$611 per week (about \$31,800 per year).

Other Tax Benefits Due to the Children. The Federal child tax credit is small relative to the EITC. It is \$600 per year per child (about \$12 per week). Further, since it is a credit, it is not applicable until the EITC begins to phase out. The value of the exemption for the child depends on whether it is applied to State or Federal taxes, and if it is Federal taxes, what is the tax rate applied the custodial parent's income? Since Michigan has a flat tax rate of 4.2 percent, the values of Michigan's tax exemptions for children are relatively small. Michigan allows \$2,900 per year per exemption to be subtracted from gross income before taxes are calculated. In addition, Michigan allows another \$600 per child under 18 years old to be subtracted. In all, this allows a \$147 per year tax benefit per child or about \$3 per week. The value of the Federal exemption can be much more, particularly if the custodial parent is in a higher tax bracket. Finally, the tax benefits associated with "head of household" are small relative to those associated with the EITC and the number of exemptions.

Technical Issue with Taxes. The tax benefits due to the children will be affected by a second spouse's income if the custodial parent remarries. It is not clear how to treat this in an order modification in the Cost Shares model. On the one hand, the tax benefit due to the EITC would likely be eliminated through remarriage. On the other hand, if the second spouse has considerable income, the benefit from claiming the child as a federal exemption could be large. Nonetheless, the point is the application of the Cost Shares model should be clear whether actual tax benefits or potential tax benefits due to the children should be used, and if actual tax benefits are used, how the changes in tax benefits due to remarriage should be considered in order modifications.

⁴⁸ Bruce D. Meyer and Dan T. Rosenbaun, *Welfare, the Earned Income Tax Credit, and the Labor Supply of Single Mothers*, National Bureau of Economic Research, Working Paper 7363, (September 1999).

⁴⁹ Center for Budget and Policy Priorities, *Should EITC Benefits be Enlarged for Families with Three or More Children?* Center on Budget and Policy Priorities, Washington, D.C. (July 10, 2000).

⁵⁰ V. Joseph Hotz and John Karl Scholz, *The Earned Income Tax Credit*, National Bureau of Economic Research, Working Paper 8078 (January 2001).

Conclusion about Tax Benefits Due to the Children. EITC is likely to be a large part of a single parent's tax benefit due to the children. Would using the EITC to offset the basic child support obligation eliminate some of the positive effects from the EITC (i.e., increased work effort and reductions in poverty levels)? To answer this question would require considerable research efforts, that would likely be comparable in effort to those undertaken to examine the interaction of EITC and the new work requirements under welfare reform. Such efforts go way beyond the scope of this study. Nonetheless, it would be extremely useful to know these impacts prior to changing how EITC is factored into the child support guidelines calculation, particularly since EITC has had such dramatic effects on increasing work efforts and reducing poverty in single-parent families.

Another concern is that the Michigan Formula does not include the EITC in either parent's income because it is means tested.⁵¹ Application of the Cost Shares Model would be a reversal of the decision to exclude it.

Low-Income Adjustment

Most versions of the Cost Shares model include an ability-to-pay adjustment for low-income noncustodial parent similar to the ability-to-pay calculation used in Arizona, Vermont and Oregon. (This is discussed more in the next chapter.) In low-income cases, the child support order shall never be set more than the difference between the noncustodial parent's after-tax income and a self support reserve. Although Cost Shares model documentation suggests that the amount of the self support reserve is at the discretion of the state, published Cost Shares models typically set the self support reserve at 133 percent of the Federal poverty guidelines for one person.⁵² Since the 2002 poverty level is \$170 per week, the self support reserve would be \$226 per week. The Income Shares states that also use this ability-pay adjustment typically set the self support reserve much lower.

Exhibit IV-4 provides an example of the calculation. It assumes the parents both earn \$300 per week. The noncustodial parent's after-tax income is \$248 per week. The custodial parent's has no tax liability because of the earned income tax credit and other tax benefits due to the children. Under the Cost Shares model, the weekly child support award would be \$102 per week prior to consideration of the ability-to-pay calculation.

If the noncustodial parent paid \$102 per week in child support, the noncustodial parent would have an after-tax, after-payment-of-child-support income of \$148 per week, which is less than the self support reserve (\$227 per week). Therefore, the child support order is set at the difference between the noncustodial parent's after-tax income and the self support reserve [\$248 - \$226 = \$22].

⁵¹ *Michigan Child Support Formula Manual 2001*, Section II.G, page 7.

⁵² Rogers uses 133 percent of the poverty because it is consistent with one of the recommendations of the Medical Child Support Working Group. [Medical Child Support Working Group, *21 Million Children's Health: Our Shared Responsibility*. Report to the Honorable Donna E. Shalala, Secretary Department of Health and Human Services (June 2000)] That recommendation is that States should establish provisions where the noncustodial parent would not be ordered to contribute toward the State cost of providing Medicaid or SCHIP to the children if the noncustodial parent's net income is less than 133 percent of poverty.

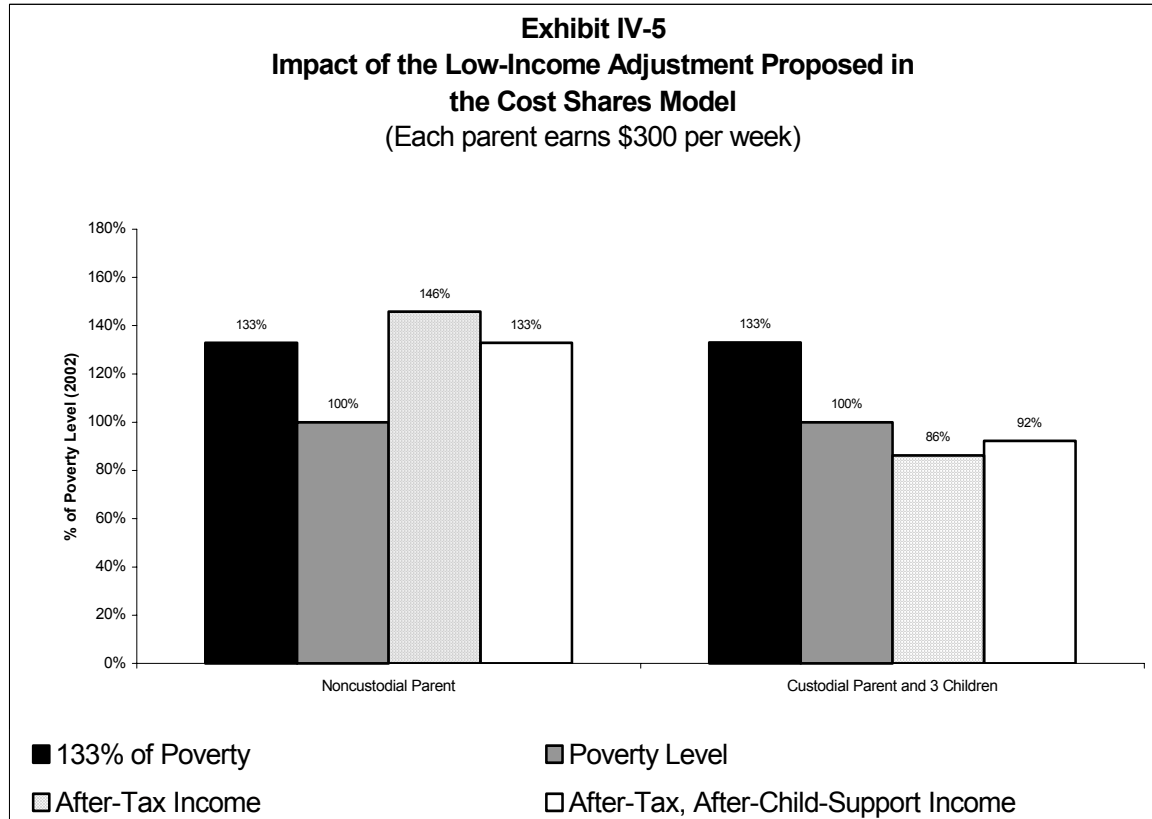
Exhibit IV-4 Example of Ability-to-Pay Calculation in Cost Shares Model (Three Children)		
	Noncustodial Parent	Custodial Parent
1. Parent's Gross Weekly Income	\$300	\$300
2. Parent's After-Tax Income ^a	\$248	\$300 ^b
3. Child Support Order before Low-Income Adjustment	\$102	
Ability-to-Pay Calculation		
4. Self support reserve	\$226	
5. Noncustodial parent's income available for support (Noncustodial parent's Line 2- Line 4, if negative amount, enter \$0)	\$ 22	
6. Enter the lower of Line 3 or Line 5 ^c	\$ 22	

^aBased on 2001 Employer's Withholding Guide

^bAfter-tax income is higher due to the Earned Income Tax Credit.

^cIn some of the writing about the Cost Shares Model, there is an option to have a minimum order, say of \$50 per month.

The limitation of this adjustment is that the noncustodial parent is always assured an after-tax, after-payment-of-child-support income above the self support reserve, but no consideration is made about how the custodial parent-family fares relative to poverty. Exhibit IV-5 illustrates this point by comparing the poverty level and after-tax, after-child-support-income of the noncustodial parent and the custodial parent and three children. As evident in Exhibit IV-5, the noncustodial parent's after-tax, after-child-support-income is 133 percent of the poverty level (\$226 per week). The after-tax, after-child-support income of the custodial household is 92 percent of the poverty level.



Michigan's low-income adjustment for low-income noncustodial parents considers the custodial household's poverty status. It is discussed more in the next chapter.

Similarities in the Models

There are a few notable similarities between the Cost Shares and Income Shares Model.

- ✓ The Cost Shares and Income Shares model assume that both parents should share in the costs of child rearing.
- ✓ The Cost Shares and Income Shares model add child care and the child's extraordinary medical expenses to the basic child support obligation and apportioned them to the parents according to each parent's income.
- ✓ The Cost Shares and Income Shares model can adjust for shared-parenting time. In fact, the Cost Shares formula mimics the shared-parenting time formula in most Income Shares states.

These similarities contrast drastically from the percentage-of-obligor income model, which only considers the noncustodial parent's income in the calculation of support. Further, few percentage-of-obligor models consider child care and the child's extraordinary medical expenses or shared-parenting time in the guidelines calculation but may consider these factors in its guidelines deviation criteria.

Conclusions about the Cost Shares Model

In all, application of the Cost Shares model will result in much lower child support orders. This is evident in Exhibits IV-6 through IV-8 which compare child support orders for a range of noncustodial parent's net incomes when the custodial parent's net income is half as much as the noncustodial parent's net income. We use a case scenario where the obligee has income so there are tax benefits due to the children. This is a crucial factor in the Cost Shares calculation. We use 50 percent because this approximates the relationship between female and male earnings. Exhibits IV-6 through IV-8 also display amounts for when there is a self support reserve of 133 percent of the poverty level for one person and when there is no self support reserve. All published versions of the Cost Shares worksheet include a self support reserve of 133 percent of the poverty level. Yet, Rogers recognizes that the amount of the self support reserve is at state-discretion. Hence, \$0 self support reserve would be the lowest amount. In other words, actual order amounts for low-income noncustodial parents are likely to be below these amounts, depending on what the state uses as a self support reserve.

Exhibits IV-6, IV-7 and IV-8 compare the support order amounts for one, two and three children. The Cost Shares model results in smaller amounts for the basic child support obligation than the Income Shares model because it relies on the following:



- ✓ child-rearing expenditures from single-parent families that are downward adjusted for the USDA's over-inflated child's housing costs, and
- ✓ only considers the average income of the parents rather than the parent's combined income.
- ✓ Further, the tax benefits due to the children are subtracted from the basic child support obligation before the noncustodial parent's share is calculated.

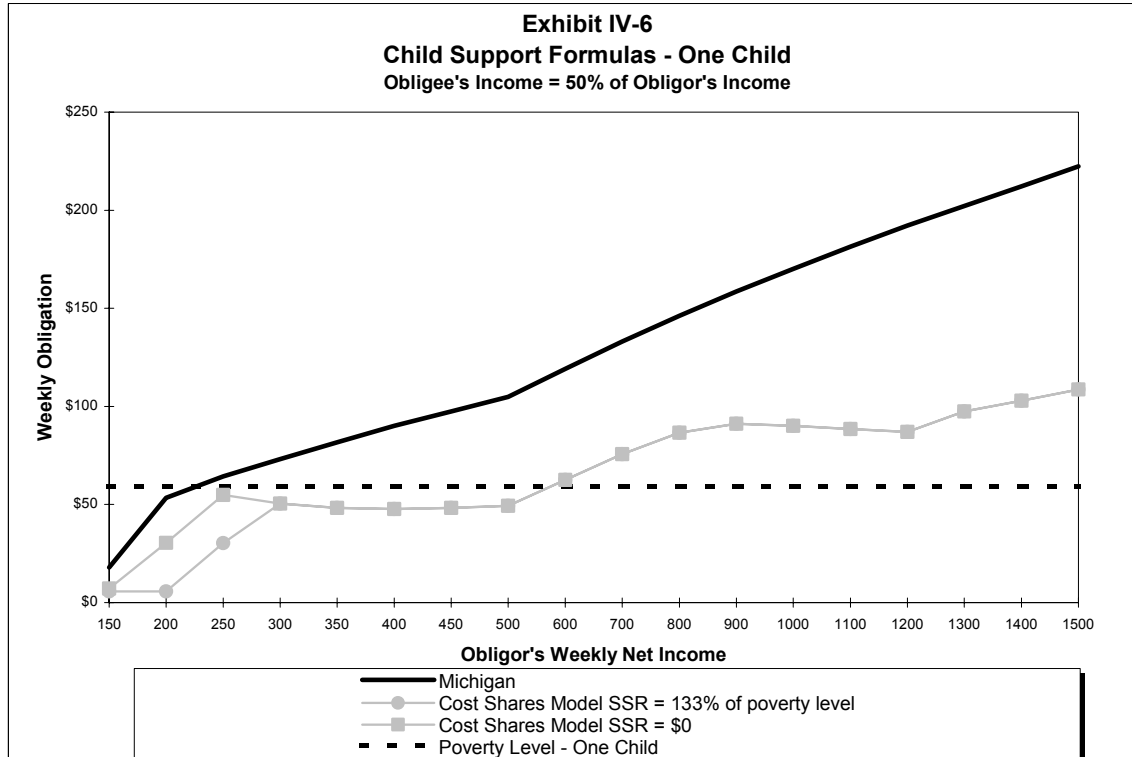
The last step is of concern because a large part of the tax benefit comes from the Federal Earned Income Tax Credit (EITC), which has been credited with significant increases in the work efforts of single parents and tremendous reductions in poverty. These positive outcomes could possibly be reduced if the EITC is considered in the child support calculation.

In addition, the structure of the Cost Shares adjustment for low-income noncustodial parents puts precedent of the noncustodial parent's basic needs over the basic needs of the custodial parent and the children. Whether the children live below or near the poverty is not considered in the Cost Shares calculation until the noncustodial parent's self support reserve is met first. In most versions of the Cost Shares model, the self support reserve is set at 133 percent of the poverty level (about \$170 per week in net income or about \$200 per week gross).

Exhibits IV-6 through IV-8 also show the poverty levels for the children only. According to the federal poverty guidelines, each additional person in a household increases the income needs by \$59 per week. Hence the poverty level needs of the children would be:

- ✓ \$59 per week for one child;
- ✓ \$118 per week for two children; and
- ✓ \$177 per week for three children.

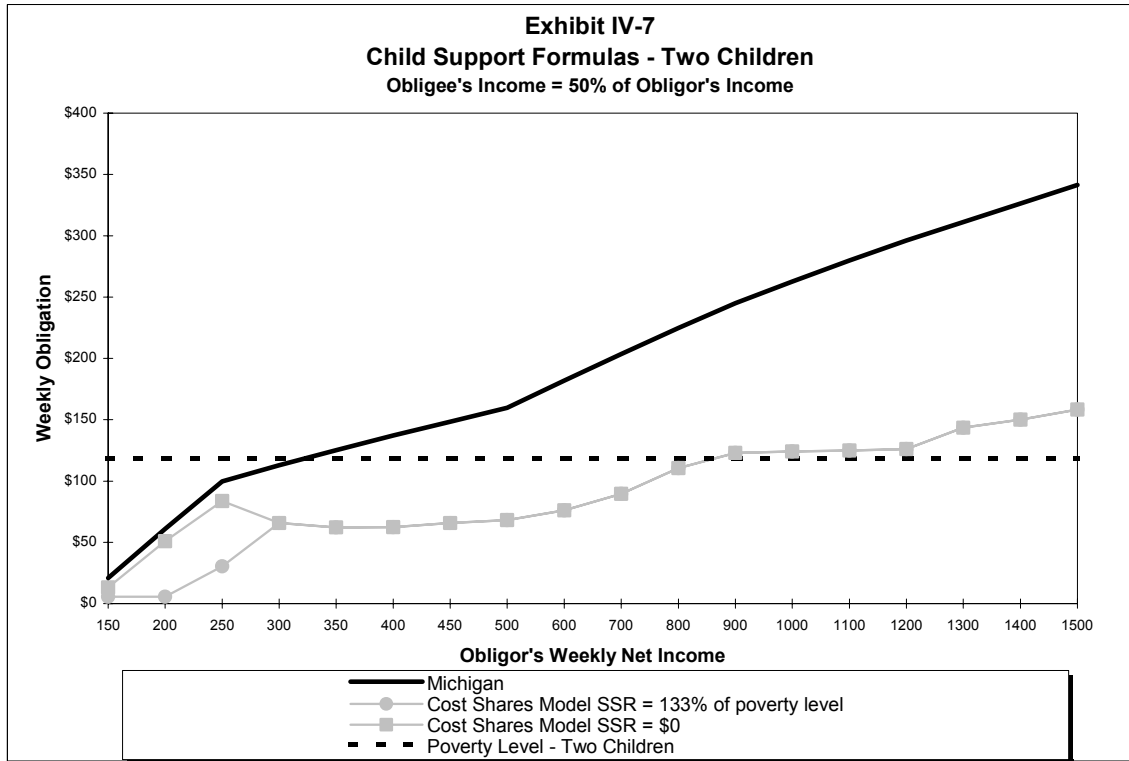
As is evident in Exhibit IV-6, under the Cost Shares model, the noncustodial parent's share of the child support obligation hovers near the poverty level until the noncustodial parent's gross income exceeds \$600 per week for one child. In cases involving two and three children, as shown in Exhibits IV-7 and IV-8, the noncustodial parent's share of the child support obligation is below or near the children's poverty level for most income ranges.



CHILD SUPPORT FORMULAS - ONE CHILD							
Obligee's Income = 50% of Obligor's Income							
Support Due (\$\$ per week)				% of Obligor's Net Income			
Obligor's Net Weekly Income	Michigan	Cost Shares Model SSR = 133% of poverty level	Cost Shares Model SSR = \$0	Obligor's Net Weekly Income	Michigan	Cost Shares Model SSR = 133% of poverty level	Cost Shares Model SSR = \$0
150	18	6	7	150	12%	4%	5%
200	54	6	30	200	27%	3%	15%
250	64	30	55	250	26%	12%	22%
300	73	51	51	300	24%	17%	17%
350	82	48	48	350	23%	14%	14%
400	90	48	48	400	23%	12%	12%
450	98	48	48	450	22%	11%	11%
500	105	49	49	500	21%	10%	10%
600	119	63	63	600	20%	10%	10%
700	133	76	76	700	19%	11%	11%
800	146	87	87	800	18%	11%	11%
900	159	91	91	900	18%	10%	10%
1000	170	90	90	1000	17%	9%	9%
1100	181	89	89	1100	16%	8%	8%
1200	192	87	87	1200	16%	7%	7%
1300	202	98	98	1300	16%	8%	8%
1400	212	103	103	1400	15%	7%	7%
1500	222	109	109	1500	15%	7%	7%

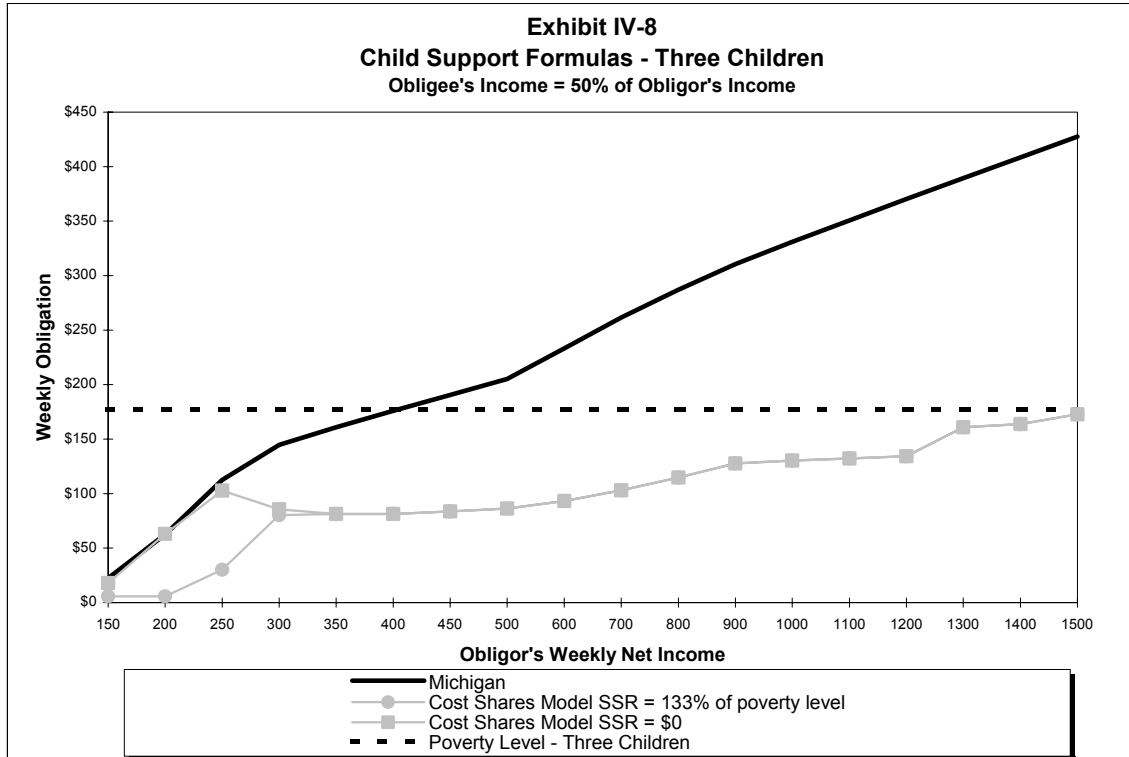


Exhibit IV-7
Child Support Formulas - Two Children
 Obligor's Income = 50% of Obligor's Income



CHILD SUPPORT FORMULAS - TWO CHILDREN
 Obligor's Income = 50% of Obligor's Income

Support Due (\$\$ per week)				% of Obligor's Net Income			
Obligor's Net Weekly Income	Michigan	Cost Shares Model SSR = 133% of poverty level	Cost Shares Model SSR = \$0	Obligor's Net Weekly Income	Michigan	Cost Shares Model SSR = 133% of poverty level	Cost Shares Model SSR = \$0
150	21	6	13	150	14%	4%	9%
200	61	6	51	200	31%	3%	25%
250	100	30	84	250	40%	12%	33%
300	113	66	66	300	38%	22%	22%
350	125	62	62	350	36%	18%	18%
400	137	63	63	400	34%	16%	16%
450	148	66	66	450	33%	15%	15%
500	160	68	68	500	32%	14%	14%
600	182	76	76	600	30%	13%	13%
700	204	89	89	700	29%	13%	13%
800	225	110	110	800	28%	14%	14%
900	245	123	123	900	27%	14%	14%
1000	263	124	124	1000	26%	12%	12%
1100	280	125	125	1100	25%	11%	11%
1200	296	126	126	1200	25%	11%	11%
1300	311	143	143	1300	24%	11%	11%
1400	326	150	150	1400	23%	11%	11%
1500	341	158	158	1500	23%	11%	11%



CHILD SUPPORT FORMULAS - THREE CHILDREN							
Obligee's Income = 50% of Obligor's Income							
Support Due (\$\$ per week)				% of Obligor's Net Income			
Obligor's Net Weekly Income	Michigan	Cost Shares Model SSR = 133% of poverty level	Cost Shares Model SSR = \$0	Obligor's Net Weekly Income	Michigan	Cost Shares Model SSR = 133% of poverty level	Cost Shares Model SSR = \$0
150	23	6	18	150	15%	4%	12%
200	63	6	63	200	31%	3%	32%
250	113	30	103	250	45%	12%	41%
300	145	80	86	300	48%	27%	29%
350	161	81	81	350	46%	23%	23%
400	176	81	81	400	44%	20%	20%
450	191	84	84	450	42%	19%	19%
500	205	86	86	500	41%	17%	17%
600	233	93	93	600	39%	16%	16%
700	261	103	103	700	37%	15%	15%
800	287	115	115	800	36%	14%	14%
900	311	128	128	900	35%	14%	14%
1000	331	130	130	1000	33%	13%	13%
1100	351	132	132	1100	32%	12%	12%
1200	370	134	134	1200	31%	11%	11%
1300	389	161	161	1300	30%	12%	12%
1400	408	164	164	1400	29%	12%	12%
1500	427	173	173	1500	28%	12%	12%



AMERICAN LAW INSTITUTE'S MODEL

Organized in 1923, the American Law Institute (ALI) promotes the simplification and clarification of the law and aims to make it more adaptable to social needs. Its members comprise legal scholars, practicing attorneys and others. In 1997, the ALI began an ambitious project to analyze family dissolution laws, including child support guidelines, then make recommendations for improving them.⁵³ To date, ALI has not completed all of the recommendations.

ALI's Criticism of Marginal Cost Estimates of Child Rearing

The ALI criticizes the marginal cost estimates of child rearing that form the basis of many State child support formulas. They find that the marginal cost approach is appropriate in situations when the parents have relatively equal incomes, but they believe it produces inappropriate results when either parent has either substantially higher or lower income than the other parent. In cases involving equal-income parents, neither parent can claim his or her standard of living is greater or lower relative to his or her income and there are no financial incentives to having physical custody of the child. Albeit, these cases are rare, the ALI uses this case scenario as benchmark for more likely case scenarios. In short, the ALI purports the playing field becomes uneven when either parent has disproportionate income.

Premise of ALI Formula

In particular, the ALI was interested in developing a formula that treats the following situations differently.

1. *The basic adequacy of the child is in question.* In these situations, the order amount should be more than an amount based on marginal costs.
2. *The noncustodial parent is low income.* In these situations, the order amount should be less than an amount based on marginal costs.
3. *The basic adequacy of the child is not an issue and the noncustodial parent's income is higher than the custodial parent's income* In these situations, there should be some modest redistribution such that the child shares in the noncustodial parent's increased standard of living.
4. *The basic adequacy of the child is not an issue and the noncustodial parent's income is lower than the custodial parent's income.* In this situation, the child is already enjoying the higher standard of living afforded by the custodial parent. There is no need to disproportionately burden the noncustodial parent with support.
5. *Shared-parenting time.* The ALI's position is that a shared-parenting formula can be applied fairly and appropriately as long as the basic adequacy and relative income provisions described above are considered.

⁵³ The Executive Office, The American Law Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations* (1997) The American Law Institute, Philadelphia, PA.

In the ALI's early writings, the Massachusetts hybrid child support formula had the elements the ALI was seeking in a guidelines formula. There is consideration of the adequacy of support for the children. Lower-income, noncustodial parents are assigned a lower percentage of gross income to child support than higher-income, noncustodial parents. The custodial parent's income is considered in the formula once the basic adequacy of the child is met. (In Massachusetts, this is defined as when the custodial parent's income exceeds \$15,000 per year net of work-related child care costs.) The only notable difference is that Massachusetts does not have a formulaic adjustment for shared-parenting time.

Further, some of the subsequent writings about the ALI use parameters higher than those in the Massachusetts child support guidelines model. Without a clear formula and parameters, the ALI model cannot be fully compared other child support model.

Conclusions about the ALI Formula

In conclusion, it is difficult to compare the ALI model to other child support models since a clear formula and parameters have not been established. Nonetheless, it appears the Massachusetts child support guidelines may be a close proxy or floor for what the ALI is proposing. If the ALI recommends higher parameters, as they do in some of their writings, the ALI model will result in order amounts that are higher than those in Massachusetts. The Massachusetts model was discussed and graphed in the previous chapter.



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